

1 ROBERT E. BELSHAW State Bar No. 142028
2 Of Counsel
3 GUTIERREZ & ASSOCIATES
4 244 California Street, Suite 300
5 San Francisco, California 94111
6 Telephone: (415) 398-2385

Attorneys for Plaintiff American Small Business League

**UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA**

AMERICAN SMALL BUSINESS LEAGUE

CASE NO.

Plaintiff,

V.

14 UNITED STATES SMALL BUSINESS ADMINISTRATION

**REPLY MEMORANDUM IN SUPPORT
OF MOTION FOR ATTORNEYS' FEES**

Defendants.

I. Introduction

The argument presented in its opposition to the ASBL’s motion for attorneys’ fees makes it readily apparent that the Small Business Administration will never cease litigating the substantive issues raised in this matter. Rather than attempt to establish that the fees requested are unreasonable, or argue that ASBL was not the prevailing party, the SBA instead treats this proceeding as a motion for reconsideration and simply reiterates the arguments rejected by this Court in the Agency’s ill-founded Motion to Dismiss. This fee motion should not provide the venue to again rehash the SBA’s positions, which will assumedly be the subject of the Agency’s

1 appeal.¹

2

3 **II. Plaintiff is the Prevailing Party**

4 Although it cannot be reasonably argued that the ASBL failed to obtain “a judicial
 5 order” which defines prevailing party status, [5 USC 552 (a)(4)(E)(ii)] the SBA does exactly that.
 6 The Agency merely repeats the sleight of hand arguments raised and rejected in its Motion to
 7 Dismiss. Plaintiff had requested similar data from the General Services Administration for
 8 comparison purposes. However, the defendant in this FOIA action was the SBA, and for good
 9 reason. The SBA has for years made public statements that a very precise dollar value of
 10 contracts. (e.g. \$77.8 billion for FY 2006) was awarded to “small businesses”. The ASBL merely
 11 asked the SBA to share its list of small business which received those contracts. SBA claimed,
 12 and claims today (after producing its list in response to this court’s order) it has no such list and
 13 directed ASBL to the massive Federal Procurement Data System (FPDS) and the GSA. However,
 14 the FPDS is a relational data base and without knowing the exact parameters used by SBA in
 15 extracting *its* list, there is no means by which anyone else, including the GSA, could duplicate,
 16 much less question, the SBA’s published results. For that reason, a response from the SBA—
 17 rather than from another agency or private contractor-- was crucial in obtaining the precise
 18 information the Agency purportedly relied on in making its annual claims of small business
 19 contract volume.

20 //

21 //

22 /

23 //

24 //

25 //

26 //

27

28

¹ The SBA’s attempt to relitigate the substantive issues is particularly disingenuous in this instance because the Agency rejected out of hand the ASBL’s suggestion that the fee motion be postponed pending the outcome of the appeal.

1 That is precisely the relief the ASBL sought and obtained from this action. The SBA
 2 attempts to obfuscate this simple result by asserting that GSA had—in response to a separate
 3 FOIA request directed to a separate agency— provided identical responsive data to ASBL the day
 4 before this lawsuit was filed. That assertion is irrelevant to this proceeding.² GSA is not a party to
 5 this action. The SBA was identified as the defendant in this action because the ASBL required the
 6 exact data relied on by that specific agency and needed to obtain it from that agency, or at the
 7 very least with that agency's imprimatur. The desired result was not obtained until the court
 8 ordered the SBA to provide the requested data.

9 III. The Fees Claimed By ASBL Are Reasonable And Well Documented

10 SBA does not claim, or even suggest, that the fee amount claimed by Plaintiff is not
 11 reasonable and instead argues fee claim is not adequately documented. Northern District Civil
 12 L.R. 54-5 provides:

13 (b) Form of Motion . Unless otherwise ordered, the motion for
 14 attorney fees must be supported by declarations or affidavits
 15 containing the following information:

16 (1) A statement that counsel have met and conferred for the
 17 purpose of attempting to resolve any disputes with respect to the
 18 motion or a statement that no conference was held, with
 19 certification that the applying attorney made a good faith effort to
 20 arrange such a conference, setting forth the reason the conference
 21 was not held; and

22 (2) A statement of the services rendered by each person for whose
 23 services fees are claimed together with a summary of the time
 24 spent by each person, and a statement describing the manner in
 25 which time records were maintained. Depending on the
 26 circumstances, the Court may require production of an abstract of
 27 or the contemporaneous time records for inspection, including in
 28 camera inspection, as the Judge deems appropriate; and

29 (3) A brief description of relevant qualifications and experience
 30 and a statement of the customary hourly charges of each such
 31 person or of comparable prevailing hourly rates or other
 32 indication of value of the services.(Emphasis added)

28 ² The ASBL was under the mistaken belief that the data provided by the GSA on February 5, 2008 in
 29 response to its FOIA request to the GSA was an incomplete subset of the data ultimately provided by the SBA in
 30 response to this court's order. However, in preparing for this motion, the GSA data was re-examined and determined
 31 to be substantially identical to that ultimately provided by the SBA.

1 Plaintiff has complied fully with the procedures set forth above. The SBA's questions
 2 regarding the fee claim are as late as they are disingenuous. As part of the meet and confer
 3 requirement set forth above, and at the Agency's request, SBA was provided with invoices
 4 containing the general summary of the hours spent, rates, and costs on September 19, 2008, well
 5 before the motion was filed. (Amended Declaration of Robert E. Belshaw in Support of Motion
 6 for Attorneys Fees, Par.2) The SBA delayed providing any response to the invoices until
 7 September 29, after the motion was filed, and only then objected to the substance and form of the
 8 fee invoices³. A second meet and confer was conducted and a corrected set of invoices was
 9 provided to SBA on October14. See, Declaration of Melanie L. Proctor, par. 4, 5. That the
 10 deficiencies in the original invoices merit so much discussion in the SBA's opposition brief filed
 11 thirteen days after the corrected invoices were served merely illustrates the absence of any cogent
 12 argument that the fee request is unreasonable.

13
 14 Dated November 3, 2008

Respectfully submitted,

GUTIERREZ & ASSOCIATES

17
 18 Robert E. Belshaw, Esq.
 19 ATTORNEYS FOR AMERICAN SMALL
 BUSINESS LEAGUE

20
 21
 22
 23
 24
 25
 26
 27
 28
³ The initial Declaration of Robert E. Belshaw filed in support of this motion reflected its preparation under pressure of time as a result of the SBA's delay in responding to ASBL's suggestion that this motion be continued pending the Agency's appeal.